



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

April 26, 1989
AO-89-09

David A. O'Brien
7 Lloyd Road
Tewksbury, Massachusetts 01876

Dear Mr. O'Brien:

This letter is in response to your request for an advisory opinion concerning the application of certain provisions of M.G.L. c.55 to public employees seeking elective office. We are sorry for the delay in responding to your request.

You have stated that you are an employee of the Commonwealth, employed for compensation as a staff member for Senator Patricia McGovern. You have stated that you are seeking the elective office of Planning Board member in the town of Tewksbury, and that you have formed a fundraising committee.

Section 13 of M.G.L. c.55 states, in part:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city, or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, but this section shall not prevent such persons from being members of political organizations or committees. The soliciting or receiving of any gift, payment, contribution, assessment, subscription or promise of money or other thing of value by a non-elected political committee organized to promote the candidacy for public office of a person so employed for compensation by the

commonwealth or any county, city or town, shall not be deemed to be a direct or indirect solicitation or receipt of such contribution by such person; provided, however, that no such gift, payment, contribution, assessment, subscription or promise of money or other thing of value may be solicited or received on behalf of such a person from any person or combination of persons if such person so employed knows or has reason to know that the person or combination of persons has any interest in any particular matter in which the person so employed participates or has participated in the course of such employment or which is the subject of his official responsibility.

You have asked that we provide you with information pertaining to the application of M.G.L. c.55 to your campaign finance activities. As we previously informed you by telephone, "conflict of interest" issues are handled by the State Ethics Commission and you may wish to contact the Commission for additional information.

It is the opinion of this office that you, as a person employed for compensation by Commonwealth, are subject to the prohibitions against direct or indirect solicitation or receipt of monies contained in section 13 of M.G.L. c.55.

You may, however, establish a campaign finance committee to solicit and receive contributions for your candidacy for Planning Board member. We would alert you to the prohibition against the solicitation or receipt of funds from any person or combination of persons who has an interest in any matter in which you participate or have participated in the course of your employment.

We would also alert you to the prohibitions contained in section 15 of M.G.L. c.55, which states: "No officer, clerk or other person in the service of the commonwealth or of any county, city or town shall, directly or indirectly, give or deliver to an officer, clerk or person in said service, or to any councillor, member of the general court, alderman, councilman or commissioner, any money or other valuable thing on account of, or to be applied to, the promotion of any political object whatever."

This section would preclude you from accepting any campaign contribution directly from another person in the public service. The Opinion of the Attorney General, dated October 27, 1964, would permit a political committee established on your behalf to accept campaign contributions from persons in the public service, however.

You should also be aware of the following provisions of

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the law:

Section 14 of M.G.L. c.55 states: "No person shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for purposes set forth in section thirteen."

Section 16 of M.G.L. c.55 states: "No person in the public service shall, for that reason, be under obligation to contribute to any political fund, or to render any political service, and shall not be removed or otherwise prejudiced for refusing to do so."

Section 17 of M.G.L. c.55 states: "No officer or employee of the commonwealth or of any county, city or town shall discharge, promote, or degrade an officer or employee, or change his official rank or compensation, or promise or threaten so to do, for giving, withholding or neglecting to make a contribution of money or other valuable thing for a political purpose."

Finally, we would advise you that no provision of M.G.L. c.55, including section 13, mandates that a public employee relinquish his or her employment in order to seek elected office. You may not, however, solicit contributions directly or indirectly, in person or in writing, while so employed. If you were to take an unpaid leave of absence of four months or more before the primary election (or six months or more before the general election), you would not be considered "employed for compensation" by this office and therefore not subject to the prohibitions of section 13 of M.G.L. c.55.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions.

Very truly yours,



Mary F. McTigue
Director

MFM-PLH/bah